

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number EB-07-TP-095
Richard Ross)	
)	NAL/Acct. No. 200732700011
)	
Titusville, FL)	FRN: 001-73713-29
)	

FORFEITURE ORDER

Adopted: May 20, 2008

Released: May 22, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three hundred fifty dollars (\$350) to Richard Ross for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violation involves Mr. Ross’ operation of an unauthorized radio transmitter.

II. BACKGROUND

2. On June 4, 2007, in response to complaints of interference, agents from the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”) inspected the Citizens Band (“*CB*”) station located at Mr. Ross’ residence. During testing of Mr. Ross’ equipment, the agents determined that two of his CB radio transmitters were non-certificated transceivers, capable of transmitting on unauthorized frequencies. The agents also measured the output power for his transmitters and found them to be operating with seven and eight watts, respectively, output powers greater than authorized in the Commission’s Rules (“*Rules*”). The agents orally warned Mr. Ross that use of non-certificated or modified equipment capable of transmitting on unauthorized frequencies and with greater power than authorized is strictly prohibited by the Rules and voided his authority to operate the CB station. Mr. Ross voluntarily surrendered both devices to the agents.

3. On July 10, 2007, in response to additional complaints of interference, the Tampa office sent an official letter, certified and regular mail, to Mr. Ross, restricting his hours of operation for his CB station. Specifically, the letter instructed Mr. Ross not to operate his CB station from 6 AM EST to 11:59 PM EST. On July 11, 2007, the Tampa office received a response to the official letter in which Mr. Ross claimed he was now in compliance with the rules.

4. On August 16, 2007, agents from the Tampa Office inspected Mr. Ross’ CB station to confirm that his CB station was in compliance with the Rules. The agents found that Mr. Ross’ CB radio station included a CB transmitter and two linear amplifiers. The agents measured the power of the CB transmitter and found it had an average power output of 3.5 watts carrier power. They tested the amplifiers combined power output and found the devices had the capability to boost the power of the

¹ 47 U.S.C. § 301.

station to several hundred times the authorized power level. The agents orally warned Mr. Ross that the use of linear amplifiers or any device that creates a power greater than the authorized limit is strictly prohibited by the Rules and voids the authority to operate the CB station. Mr. Ross voluntarily surrendered both linear amplifiers to the agents.

5. On November 20, 2007, in response to additional complaints of interference, at approximately 10:15 A.M., agents from the Tampa Office located the source of a strong signal on a CB radio channel using direction finding methods to Mr. Ross' residence. An agent recognized the voice of the transmissions to be that of Mr. Ross.

6. Still on November 20, 2007, agents from the Tampa Office inspected Mr. Ross CB station. A wattmeter measurement indicated the power of Mr. Ross' transmitter during the inspection to be two watts, under the maximum authorized power under the Rules. The agents then traced the coaxial cable from the output of the transmitter and found it was connected to a linear amplifier. Measurements taken with the amplifier connected to the CB transmitter indicated the amplifier had the capability to boost the power of the station to several hundred times the authorized power.

7. Still on November 20, 2007, the agents observed an open notebook. The notebook showed log entries that indicated that Mr. Ross made several long distance calls using his CB radio during that morning. The entries coincided with the times the agents, using direction finding techniques, traced transmissions originating from Mr. Ross' residence. The agents orally warned Mr. Ross that the use and possession of the linear amplifier and operating out of the authorized hours prescribed on the official letter issued on July 10, 2007 violated the Rules and voided his authority to operate the CB station.

8. On March 31, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Ross in the amount of ten thousand dollars (\$10,000), for the apparent willful and repeated violation of Section 301 of the Act.² Mr. Ross submitted a response to the *NAL* requesting cancellation of the proposed forfeiture.

III. DISCUSSION

9. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Ross' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

10. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 95.404 of the Rules⁶ states that CB operators do

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732700011 (Enf. Bur., Tampa Office, March 31, 2008) ("*NAL*").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 95.404.

not require an individual license to operate a CB station because they are authorized by this rule to operate in accordance with the rules in this subpart. Individuals operating, pursuant to this provision, however, must operate their CB stations in accordance with the rules in this subpart.

11. Section 95.409(a) of the Rules⁷ states that you must use an FCC certificated CB transmitter at your CB station and that the use of a transmitter, which is not FCC certificated voids your authority to operate the station. Section 95.410 of the Rules⁸ states that your CB station transmitter power output must not exceed ... under any conditions: 4 watts (carrier power). Use of a transmitter which has carrier power in excess of that authorized voids your authority to operate the station. On June 4, 2007, agents from the Tampa Office determined that Mr. Ross operated his CB station with two non-certificated transmitters that had a power output of seven and eight watts (carrier power), respectively. On June 4, 2007, Mr. Ross was warned that operation of his CB station with a non-certificated transmitter and with a power level greater than authorized violated the Rules and voided his authority to operate his CB station.

12. Section 95.411(a) of the Rules⁹ states that you may not attach external radio frequency (RF) power amplifiers to your certificated CB transmitter in any way. Section 95.411(b) of the Rules¹⁰ states that there are no exceptions to this rule and that use of a power amplifier voids your authority to operate the station. The Commission will presume that you have used a power amplifier if it is in your possession and if there is other evidence of overpower operation. On August 16, 2007, and on November 20, 2007, agents from the Tampa Office observed that Mr. Ross had attached linear amplifiers to his CB station. Immediately prior to the inspection on November 20, 2007, the agents observed Mr. Ross' CB station in operation. On August 16, 2007 and November 20, 2007, the agents determined that the amplifiers attached to Mr. Ross' CB station had the capability to boost the power of the station to several hundred times the authorized power level.¹¹ On August 16, 2007, and November 20, 2007, Mr. Ross was warned that attaching linear amplifiers to his CB station violated the Rules and voided his authority to operate his CB station.

13. Section 95.423(a) of the Rules¹² states that if the FCC tells you that your CB station is causing interference for technical reasons you must follow all instructions in the official FCC notice. Section 95.423(b) of the Rules¹³ states that you must comply with any restricted hours of CB station operation which may be included in the official notice. On July 10, 2007, the Tampa Office sent an official letter, certified and regular mail, to Mr. Ross. In the official letter Mr. Ross was instructed not to operate his CB station from 6 AM EST to 11:59 PM EST. On November 20, 2007, the agents observed Mr. Ross operating his CB station out of the authorized hours (approximately 10:15 AM) established in the July 10, 2007 official letter.

14. Mr. Ross' response to the *NAL* does not deny the violations. Because Mr. Ross violated several sections of Part 95, Subpart D of the Rules, Mr. Ross voided his authority to operate his CB station pursuant to Section 95.404 of the Rules. Therefore, based on the evidence before us, we find that on June 4, August 16, and November 20, 2007, Mr. Ross willfully¹⁴ and repeatedly¹⁵ violated Section 301

⁷ 47 C.F.R. § 95.409(a).

⁸ 47 C.F.R. § 95.410.

⁹ 47 C.F.R. § 95.411(a).

¹⁰ 47 C.F.R. § 95.411(b).

¹¹ See 47 C.F.R. § 95.410.

¹² 47 C.F.R. § 95.423(a).

¹³ 47 C.F.R. § 95.423(b).

¹⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or

of the Act by operating a radio transmitter, his CB station, without authorization from the Commission.

15. Finally, Mr. Ross states that payment of the forfeiture would pose an undue financial hardship. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁶ After examining the financial documentation submitted by Mr. Ross, we agree and reduce the forfeiture to \$350 based on his demonstrated inability to pay.

16. We have examined Mr. Ross' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$350 is warranted, based on demonstrated inability to pay.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Richard Ross **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three hundred fifty dollars (\$350) for violation of Section 301 of the Act.¹⁷

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁵ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁶ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁸ 47 U.S.C. § 504(a).

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Richard Ross at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau